

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 510

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO CRIMINAL JUSTICE; ESTABLISHING THE NEW MEXICO  
SENTENCING COMMISSION; EXPANDING DUTIES; MAKING AN  
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-3-10 NMSA 1978 (being Laws 1977,  
Chapter 257, Section 11, as amended) is amended to read:

"9-3-10. [~~CRIMINAL AND JUVENILE JUSTICE COORDINATING  
COUNCIL~~] NEW MEXICO SENTENCING COMMISSION- - CREATION- -  
MEMBERSHIP- - DUTIES. - -

A. There is created the [~~criminal and juvenile  
justice coordinating council~~] "New Mexico sentencing  
commission".

B. The [~~criminal and juvenile justice coordinating  
council~~] New Mexico sentencing commission shall be composed of

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 [fifteen] twenty-three members. Appointed members shall serve  
2 at the pleasure of the appointing authority. The [~~council~~]  
3 commission shall reflect reasonable geographical and  
4 urban-rural balances and regard for the incidence of crime and  
5 the distribution and concentration of law enforcement services  
6 in the state. The [~~council~~] commission shall consist of the  
7 following individuals or their designees:

- 8 (1) the attorney general;
- 9 (2) a district attorney appointed by the  
10 district attorneys association of New Mexico;
- 11 (3) the chief public defender;
- 12 (4) two district court judges, one of whom  
13 shall be a children's court judge, appointed by the district  
14 court judge's association of New Mexico;
- 15 (5) a judge from the court of appeals  
16 appointed by the chief judge of the court of appeals;
- 17 (6) the dean of the university of New Mexico  
18 [~~college~~] school of law;
- 19 (7) the secretary of corrections;
- 20 (8) the secretary of public safety;
- 21 (9) the secretary of children, youth and  
22 families;
- 23 (10) a county sheriff appointed by the  
24 executive director of the New Mexico association of counties;
- 25 (11) two public members appointed by the

underscored material = new  
[bracketed material] = delete

1 governor, one of whom shall be designated as chairman of the  
2 [~~eriminal and juvenile justice coordinating council~~] New Mexico  
3 sentencing commission by the governor;

4 (12) three public members appointed by the  
5 president pro tempore of the senate;

6 (13) three public members appointed by the  
7 speaker of the house of representatives;

8 (14) two public members appointed by the chief  
9 justice of the supreme court;

10 (15) one public member who is Native American  
11 and a practicing attorney, appointed by the president of the  
12 state bar association; and

13 (16) one public member who is the president of  
14 the New Mexico victim assistance organization.

15 C. A majority of the members of the [~~eriminal and~~  
16 ~~juvenile justice coordinating council~~] New Mexico sentencing  
17 commission constitutes a quorum for the transaction of  
18 [~~council~~] commission business.

19 D. The [~~eriminal and juvenile justice coordinating~~  
20 ~~council~~] New Mexico sentencing commission shall:

21 (1) hold meetings at times and for periods as  
22 the [~~council~~] commission deems necessary;

23 (2) hire staff as needed to assist the  
24 [~~council~~] commission in the performance of its duties;

25 (3) prepare an annual budget;

underscored material = new  
[bracketed material] = delete

1 (4) establish policies for the operation of  
2 the [~~criminal and juvenile justice coordinating council~~] New  
3 Mexico sentencing commission and supervision of the activities  
4 of [~~council~~] commission staff;

5 (5) advise the executive, judicial and  
6 legislative branches of government on policy matters relating  
7 to criminal and juvenile justice;

8 (6) make recommendations to the legislature  
9 concerning proposed changes to laws relating to the criminal  
10 and juvenile justice systems that the [~~council~~] commission  
11 determines would improve those systems; [~~and~~

12 ~~(7) assume the following duties as primary~~  
13 ~~responsibilities during the first year when an appropriation is~~  
14 ~~made to the criminal and juvenile justice coordinating council~~  
15 ~~for the purpose of taking action to:~~

16 (a) (7) annually assess, monitor and report  
17 to the legislature on the impact of any enacted sentencing  
18 guidelines on correctional resources and programs and the need  
19 for further sentencing reform;

20 (8) when developing proposed sentencing  
21 reform;

22 (a) study sentencing models in other  
23 jurisdictions;

24 (b) study the Criminal Sentencing Act,  
25 the Criminal Code and all other New Mexico statutes relating to

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 criminal law, criminal sentencing, criminal procedure and  
2 probation and parole;

3 ~~[(b)]~~ (c) review past studies or reports  
4 regarding proposed changes to the Criminal Code, the Criminal  
5 Sentencing Act or other New Mexico statutes relating to  
6 criminal law, criminal sentencing, criminal procedure or  
7 probation and parole;

8 ~~[(e)]~~ (d) study past and current  
9 criminal sentencing and release practices and create a  
10 statistical database for simulating the impact of various  
11 sentencing policies;

12 ~~[(d)]~~ (e) study the full range of  
13 prison, nonprison and intermediate sanctions;

14 ~~[(e) study, develop and define specific~~  
15 ~~criminal sentencing policies and make recommendations that~~  
16 ~~address major policy issues, including: 1) determining]~~

17 (f) determine the principal purpose for  
18 criminal sanctions; ~~[2) ranking]~~

19 (g) rank criminal offenses by degree of  
20 seriousness; ~~[3) determining]~~

21 (h) determine the role of criminal  
22 history in making criminal sentencing decisions; ~~[4) defining]~~

23 (i) define dispositional policy that  
24 determines when adult felony offenders are confined in state  
25 prisons and county jails or sentenced to nonprison and

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 intermediate sanctions; [~~5~~—~~establishing~~]

2 (j) establish the length of criminal  
3 sentences; [~~6~~—~~establishing~~]

4 (k) establish the appropriate use of  
5 community service and fines; [~~and 7~~—~~structuring~~]

6 (l) structure proposed sentencing  
7 guidelines to assure consistency in all aspects of criminal  
8 sentencing policy;

9 [~~(f)~~] (m) assess the impact of [~~council~~]  
10 commission recommendations to modify criminal sentencing policy  
11 on the availability of and need for correctional resources and  
12 programs;

13 [~~(g)~~—~~assess, monitor and report on the~~  
14 ~~impact of any enacted sentencing guidelines on correctional~~  
15 ~~resources and programs;~~]

16 (n) use the expertise of a national or  
17 state organization with experience in sentencing reform; and

18 (o) present proposed legislation or  
19 recommendations regarding sentencing reform to the appropriate  
20 legislative interim committee;

21 [~~(h)~~] (9) monitor any enacted sentencing  
22 guidelines with respect to uniformity and proportionality;

23 [~~(i)~~] (10) conduct research relating to the  
24 use and effectiveness of any enacted guidelines, prosecution  
25 standards, offense charging, plea bargaining, sentencing

. 143977. 1

underscored material = new  
[bracketed material] = del etc

1 practices, probation and parole practices and any other matters  
2 relating to the criminal justice system; ~~and~~

3 ~~(j)}~~ (11) serve as a clearinghouse for the  
4 systematic collection, analysis and dissemination of  
5 information relating to felony offense charges, plea  
6 agreements, convictions, sentences imposed, incarceration time  
7 actually served and actual and projected inmate population in  
8 the state correctional system;

9 (12) review all proposed legislation that  
10 creates a new criminal offense, changes the classification of  
11 an offense or changes the range of punishments for an offense  
12 and make recommendations to the legislature as to whether  
13 proposed changes would improve the criminal and juvenile  
14 justice system; and

15 (13) provide impact estimates, incorporating  
16 prison population projections, on all proposed legislation that  
17 has the potential to affect correctional resources.

18 E. The members of the ~~[criminal and juvenile~~  
19 ~~justice coordinating council]~~ New Mexico sentencing commission  
20 shall be paid pursuant to the Per Diem and Mileage Act and  
21 shall receive no other perquisite, compensation or allowance.

22 F. The ~~[criminal and juvenile justice coordinating~~  
23 ~~council]~~ New Mexico sentencing commission is administratively  
24 attached to the office of the governor."

25 Section 2. Section 9-3-10.1 NMSA 1978 (being Laws 1994,

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 Chapter 19, Section 2) is amended to read:

2 "9-3-10.1. AUTHORITY TO REVIEW RECORDS OR INFORMATION--  
3 EXCEPTIONS-- RULES. --

4 A. The [~~eriminal and juvenile justice coordinating~~  
5 ~~council~~] New Mexico sentencing commission is authorized to  
6 inspect, copy, receive and review all records, data and  
7 information in the possession of state, county and local  
8 government agencies, except records, data or information that:

9 (1) [~~are~~] is privileged under the rules of  
10 evidence;

11 (2) [~~compromise~~] compromises or [~~tend~~] tends  
12 to disclose any privileged record or information; or

13 (3) [~~are~~] consists of reports, memoranda or  
14 other internal documents given to or communications made to a  
15 prosecutor or defense attorney in connection with the  
16 investigation, prosecution or defense of a criminal case.

17 B. The [~~eriminal and juvenile justice coordinating~~  
18 ~~council~~] New Mexico sentencing commission shall promulgate  
19 rules setting forth procedures for inspecting, copying,  
20 receiving, reviewing and reporting records, data and  
21 information necessary to fulfill its duties. State, county and  
22 local government agencies shall assist the [~~council~~] commission  
23 in obtaining the records, data and information necessary to  
24 fulfill the [~~council's~~] commission's duties. All records, data  
25 and information received or obtained by the [~~council~~]

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 commission shall have the same status with regard to access or  
2 release as when the records, data or information [~~were~~] was in  
3 the possession of the entity from [~~whom~~] which the [~~council~~]  
4 commission received [~~them~~] it. "

5 Section 3. Section 9-3-10.2 NMSA 1978 (being Laws 1994,  
6 Chapter 19, Section 3) is amended to read:

7 "9-3-10.2. AUTHORITY TO ACCEPT GRANTS OR DONATIONS. -- The  
8 [~~criminal and juvenile justice coordinating council~~] New Mexico  
9 sentencing commission may, in the name of the state, accept  
10 grants, donations or gifts to carry out its functions and  
11 purposes. "

12 Section 4. Section 31-18-15 NMSA 1978 (being Laws 1977,  
13 Chapter 216, Section 4, as amended) is amended to read:

14 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
15 BASIC SENTENCES AND FINES-- PAROLE AUTHORITY--MERITORIOUS  
16 DEDUCTIONS. --

17 A. If a person is convicted of a noncapital felony,  
18 the basic sentence of imprisonment is as follows:

19 (1) for a first degree felony, eighteen years  
20 imprisonment;

21 (2) for a second degree felony resulting in  
22 the death of a human being, fifteen years imprisonment;

23 (3) for a second degree felony, nine years  
24 imprisonment;

25 (4) for a third degree felony resulting in the

underscored material = new  
[bracketed material] = delete

1 death of a human being, six years imprisonment;

2 (5) for a third degree felony, three years  
3 imprisonment; or

4 (6) for a fourth degree felony, eighteen  
5 months imprisonment.

6 B. The appropriate basic sentence of imprisonment  
7 shall be imposed upon a person convicted of a first, second,  
8 third or fourth degree felony or a second or third degree  
9 felony resulting in the death of a human being, unless the  
10 court alters such sentence pursuant to the provisions of  
11 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

12 C. The court shall include in the judgment and  
13 sentence of each person convicted of a first, second, third or  
14 fourth degree felony or a second or third degree felony  
15 resulting in the death of a human being and sentenced to  
16 imprisonment in a corrections facility designated by the  
17 corrections department authority for a period of parole to be  
18 served in accordance with the provisions of Section 31-21-10  
19 NMSA 1978 after the completion of any actual time of  
20 imprisonment and authority to require, as a condition of  
21 parole, the payment of the costs of parole services and  
22 reimbursement to a law enforcement agency or local crime  
23 stopper program in accordance with the provisions of that  
24 section. The period of parole shall be deemed to be part of  
25 the sentence of the convicted person in addition to the basic

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 sentence imposed pursuant to Subsection A of this section  
2 together with alterations, if any, pursuant to the provisions  
3 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA  
4 1978.

5 D. When a court imposes a sentence of imprisonment  
6 pursuant to the provisions of Section 31-18-15.1, 31-18-16,  
7 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the  
8 basic sentence of imprisonment provided pursuant to the  
9 provisions of Subsection A of this section, the period of  
10 parole shall be served in accordance with the provisions of  
11 Section 31-21-10 NMSA 1978 for the degree of felony for the  
12 basic sentence for which the inmate was convicted. For the  
13 purpose of designating a period of parole, a court shall not  
14 consider that the basic sentence of imprisonment was suspended  
15 or deferred and that the inmate served a period of imprisonment  
16 pursuant to the provisions of Section 31-18-15.1, 31-18-16,  
17 31-18-16.1 or 31-18-17 NMSA 1978.

18 E. The court may, in addition to the imposition of  
19 a basic sentence of imprisonment, impose a fine not to exceed:

20 (1) for a first degree felony, fifteen  
21 thousand dollars (\$15,000);

22 (2) for a second degree felony resulting in  
23 the death of a human being, twelve thousand five hundred  
24 dollars (\$12,500);

25 (3) for a second degree felony, ten thousand

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 dollars (\$10,000);

2 (4) for a third degree felony resulting in the  
3 death of a human being, five thousand dollars (\$5,000); or

4 (5) for a third or fourth degree felony, five  
5 thousand dollars (\$5,000).

6 F. When the court imposes a sentence of  
7 imprisonment for a felony offense, the court shall indicate  
8 whether or not the offense is a serious violent offense, as  
9 defined in Section 33-2-34 NMSA 1978. The court shall inform  
10 an offender that the offender's sentence of imprisonment is  
11 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37  
12 and 33-2-38 NMSA 1978. If the court fails to inform an  
13 offender that the offender's sentence is subject to those  
14 provisions or if the court provides the offender with erroneous  
15 information regarding those provisions, the failure to inform  
16 or the error shall not provide a basis for a writ of habeas  
17 corpus.

18 G. No later than October 31 of each year, the  
19 [~~criminal and juvenile justice coordinating council~~] New Mexico  
20 sentencing commission shall provide a written report to the  
21 secretary of corrections, all New Mexico criminal court judges,  
22 the administrative office of the district attorneys and the  
23 chief public defender. The report shall specify the average  
24 reduction in the sentence of imprisonment for serious violent  
25 offenses and nonviolent offenses, as defined in Section 33-2-34

. 143977. 1

underscored material = new  
[bracketed material] = delete

1 NMSA 1978, due to meritorious deductions earned by prisoners  
2 during the previous fiscal year pursuant to the provisions of  
3 Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The  
4 corrections department shall allow the [~~coordinating council~~]  
5 commission access to documents used by the department to  
6 determine earned meritorious deductions for prisoners. "

7 Section 5. TEMPORARY PROVISION--SENTENCING REFORM --In  
8 fiscal years 2004 and 2005, using the expertise of a national  
9 or state organization with experience in sentencing reform, the  
10 New Mexico sentencing commission shall develop sentencing  
11 reforms for the state and present recommended reforms to the  
12 legislature.

13 Section 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
14 PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES IN LAW. --

15 A. On July 1, 2003, all personnel, appropriations,  
16 money, records, furniture, equipment and other personal and  
17 real property of the criminal and juvenile justice coordinating  
18 council shall be transferred to the New Mexico sentencing  
19 commi ssi on.

20 B. On July 1, 2003, all contracts and other  
21 obligations binding on the criminal and juvenile justice  
22 coordinating council shall be transferred to the New Mexico  
23 sentencing commi ssi on.

24 C. On July 1, 2003, all references in the law to  
25 the criminal and juvenile justice coordinating council shall be

. 143977. 1

1 deemed to be references to the New Mexico sentencing  
2 commission.

3 Section 7. APPROPRIATION. -- Five hundred thousand dollars  
4 (\$500,000) is appropriated from the general fund to the New  
5 Mexico sentencing commission for expenditure in fiscal year  
6 2004 to carry out additional sentencing and impact assessment  
7 duties and hire additional staff. Any unexpended or  
8 unencumbered balance remaining at the end of fiscal year 2004  
9 shall revert to the general fund.

10 Section 8. EFFECTIVE DATE. -- The effective date of the  
11 provisions of this act is July 1, 2003.